Mr. A. Lekshminarayana Ayyar: I second it.

The motion was put and carried.

Clauses 1 to 11.

The question that Clauses 1 to 11 do form part of the Bill was put and carried.

The clauses were added to the Bill.

Title and Preamble.

The question that the Title and Preamble do form part of the Bill was put and carried.

The Title and Preamble were added to the Bill.

Mr. Puthupally S. Krishna Pillai: Sir, I beg to move that the Prevention of Cruelty to Animals Act (Amendment) Bill be passed.

Mr. A. Lekshminarayana Ayyar: I second it.

The motion was put and carried and the Bill was passed.

THE TRAVANCORE FISHERIES ACT (AMENDMENT) BILL.

Mr. Puthupally S. Krishna Pillai: Sir, I beg to move that the Travancore Fisheries Act (Amendment) Bill as passed by the Sri Mulam Assembly be taken up for consideration.

Mr. A. Lekshminarayana Ayyar: I second it.

The motion was put and carried.

Clauses 1 to 3.

The question that Clauses 1 to 3 do form part of the Bill was put and carried.

The Clauses were added to the Bill.

Preamble and Title

The question that the Preamble and the Title do form part of the Bill was put and carried.

The Preamble and the Title were added to the Bill.

Mr. Puthupally S. Krishna Pillai: Sir, I beg to move that the Travancore Fisheries Act (Amendment) Bill be passed.

Mr. A. Lekshminarayana Ayyar: I second it.

The motion was put and carried and the Bill was passed.

THE TRAVANCORE SUPPRESSION OF IMMORAL TRAFFIC BILL.

Mr. Puthupally S. Krishna Pillai: Sir, I beg to move that the Travancore Suppression of Immoral Traffic Bill as passed by the Sri Mulam Assembly be taken up for consideration.

Mr. A. Lekshminarayana Ayyar: I second it.

The motion was put and carried.

Mr. Kochikal P. Balakrishnan Tampi: Sir, I wish to know why provision with regard to rescue homes is omitted from this Bill ?

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. Puthupally S. Krishna Pillai: The class of offences for which persons may have to be housed in rescue homes has been omitted altogether from the Bill. The question of providing rescue homes is engaging the attention of Government and as it is a matter which involves very large expenditure of money and as the matter has to be investigated further, provision for that matter has not been made in the Bill. But steps will be taken for the purpose of establishing rescue homes and for making appropriate provisions in this or other legislative measures.

President: I can understand the purpose of the question. It is impossible adequately to legislate on the question of beggary without providing homes for infirm and diseased beggars and also industrial establishments for dealing with able-bodied beggars. It is no doubt equally the case that you cannot adequately and thoroughly deal with the question of suppression of the commercial vice without rescue homes where boys and girls who have been so used to their own physical and moral detriment may be reformed. That is a matter which would involve the expenditure of money and require very careful study and scrutiny of the methods and means and complete co-operation between the non-official public and Government. Without a certain number of enthusiastic and public spirited men to devote themselves to this cause, such homes may be a nuisance rather than an advantage. Certainly, every district would have to be provided with rescue homes. That is why Government have not, at this juncture, embodied provisions relating to that in the Bill. But they are not unalive to the importance and urgency of the question.

Clauses 1 to 3.

The question that Clauses 1 to 3 do form part of the Bill was put and carried.

The Clauses were added to the Bill.

Clause 4.

Mr. James Fletcher: Sir, I beg to move the following amendment:—

> "In Clause 4 sub-clause (1) 'any person who keeps or manages a brothel or acts or assists in the management of a brothel shall be punished, etc.' may be substituted for the present section".

Section 4 reads thus:—

> "Any person who keeps or manages or acts or assists in the management of a brothel shall be punished with imprisonment which may extend to two years—"

The wording of the section would be better if it is changed as suggested. The present wording does not seem to be quite happy.

President: It is a matter of mere changing of wording.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. James Fletcher: I submit that that change may be made in the section.

Mr. T. Muhammed Ismail: (*Nominated*): I second it.

Mr. Puthupally S. Krishna Pillai. Sir, I am afraid the Member has to familiarise himself a little more with the language or the wording used in Statutory Enactments. The present wording is absolutely correct and it is not likely to be misunderstood by any person who reads it. We have only to read it correctly.

> "Any person who keeps or manages or acts or assists in the management of a brothel shall be punished with imprisonment etc."

The ordinary method of drafting it is like that. Otherwise we will have to insert the word "brothel" after every verb occurring in the clause. In the drafting of Bills, the wording as it is now adopted is considered to be more compendious. I oppose the amendment. The reasoning is that the amendment will be better in form. But I submit that the present form is quite in form.

Mr. M. Govindan: What about the punctuations?

President: Marginal notes and punctuations are, according to well-known canons, not regarded as part of the Bill.

The amendment was put to vote and lost.

Mr. James Fletcher: Sir, I beg to move that

"In clause 4, delete sub-clause (2) (b)".

Sir, the effect of this sub-section is to punish the lessor or the landlord for no fault of his. It is something like punishing a master for the criminal acts of his servant. It is a general rule of criminal law that a master is not responsible for the unauthorised acts of his servant.

President: But there are very well-known exceptions.

Mr. James Fletcher: I am aware of that. In various Acts, a master is not liable for the negligent or fraudulent acts of his servants. I concede that a master has got control over his servants. In spite of that if a servant does something without the permission or inducement of the master, the servant cannot be punished. In spite of that, if a servant does something without the permission or inducement of his master, the master cannot be held punishable for his criminal action. But here the situation is different. The landowner or the landlord who has no control over the actions of his tenant is to be punished.

Mr. Kochikal P. Balakrishnan Tampi: Assume for a moment that the landlord, in order to evade the law, leases premises to be used as a brothel to a servant or agent of his. Then what happens?

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. James Fletcher: For that Section 4 (1) has the following provision:

"Any person who keeps or manages or acts or *assists* in the management of a brothel" etc. The word 'assists' will be sufficient to cover that object also.

Rajyasevapravina G. Parameswaran Pillai: May I invite the attention of the honourable member to the very clause which states;—

"being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof, etc.'

Mr. James Fletcher: Sir, I am coming to that provision also. Now let us take a concrete example. Suppose a landlord leases out a portion of his premises to a tenant for a period of 6 years; accordingly the contract is executed and registered. Now at this stage there is absolutely nothing punishable under Section 4 (1). A year later the mischief is started and the landlord is unaware of this. It is found out by the Police.

Mr. Kochikal P. Balakrishnan Tampi: May I ask the honourable member to be more lucid. He is very abstruse.

Mr. James Fletcher: Sir, I am trying to make my points as clear as possible. Then is it just to punish the landlord? It is only afterwards that the landlord becomes aware of the fact that his tenant is using his premises as a brothel. Even if he comes to know beforehand he is not in a position to evict him because of the contract which he has executed with his tenant.

President: But in the English Common Law there is provision for it.

Mr. James Fletcher: Assuming that the londlord is in a a position to immediately evict him he will have to face a civil suit filed against him by his tenant if he is resourceful. Sir, this is the experience that we have here. The landlord is not invested with the powers of a Police officer to evict an undesirable tenant then and there.

Mr. Kochikal P. Balakrishnan Tampi: May I suggest to the honourable member that, that can be remedied by the landlord being more careful in the choice of his tenants.

Mr. James Fletcher: He will be always careful to choose the best tenant. But apparently they all seem to be good. It is impossible for a landlord to forecast what would happen of his good tenant later, whether his conduct would change or not. So much so, the landlord is without any powers to remove an undesirable tenant from his house immediately when he comes to know that he is an undesirable one. There he is helpless. He knows that the

LIBRARY ARCHIVES Kerala Legislative Assembly

house is being used as a brothel. He knows also that if his tenant occupies that house he will be liable for punishment. But he is unable to evict the tenant from his house. If it is to be interpreted that the landlord leased out his house with the knowledge that it will be used as a brothel then the provision justifies itself. In that case, I have no grievance. The punishment given to landlord under this provision is not a fine but three months' imprisonment. Sir, very respectable persons possess more than one house in this city. Some of them may possess houses in the various quarters of the city. These houses are all generally rented out. The owner in naturally not in a position to know exactly what is happening in each and every house.

There are cases that this offence may be considered a public nuionce and brought within the purview of that Act. Then for offences like nuisance the occupier is alone held liable for punishment and not the absent proprietor. I do not understand why in this case, the absent owner or the neighbour is held liable.

Mr. G. Narayana Aiyar: May I know whether under sub-clause (3), the landlord cannot terminate the lease if the occupier has been convicted under clause (a) of sub-section 2 of Section 4 ?

Mr. James Fletcher: Even if there is a termination of lease, the difficulty is in the matter of eviction. Legal termination may be possible but eviction becomes impossible for many months. As long as it is not the intention of Government to punish persons possessing houses and as long as it is not desirable to discourage people from owning more than one house, I am for amending the Bill. Section 4 (1) would bring every active helper of a brothel within it. I do not know why the landlord who has nothing to do with what is happening in a house which he has rented out is held responsible. I request the Legal Remembrancer to drop this section out of the enactment.

Sahib Bahadur T. Mahomed Ismail: Sir, I second the motion.

Mr. V. Sankara Menon: May I know where the burden of proof lies ? Is it upon the landlord ?

President: Obviously, the prosecution will have to prove knowledge. What is the doubt about it ?

Mr. Kochikal P. Balakrishnan Tampi: As it was hinted by the Chair, an eminent lawyer that my friend Mr. Fletcher is, we have learnt from him all about brothels. To prove that the landlord who lets out his house for the purpose of a brothel is innocent and should be let out scot free he has brought forward arguments with all the force which he could command. But the words 'with the knowledge' and 'wilfully' are sufficient precaution against innocent landlords coming into trouble. I am one with

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Kōchikal P. Balakrishnan Tampi.]

Mr. Fletcher in believing that the discreet landlords will be the last persons to keep brothels. But we cannot tolerate landlords who undoubtedly gain much by encouraging houses of ill fame by accommodating persons of dubious character. This Bill proposes to taboo commercialised vice. It should be the endeavour of the Legal Remembrancer to see, though obviously impossible, that other evil things which might come within the domain of law and ethics also are prevented.

The amendment was put and lost.

The question that Clause 4 do stand part of the Bill was then put and carried.

Clause 4 was added on to the Bill.

Clauses 5 to 11.

The question that Clauses 5 to 11 do stand part of the Bill was put and carried. Clauses 5 to 11 were added to the Bill.

Mr. James Fletcher: Sir, I beg to move the following amendment.

Add the following as Section 12.

"Any offence under this Act will be dealt with as a bailable offence".

Sir, this Bill does not say whether the offence is bailable or non-bailable. According to the provision of the Bill an Inspector of Police can make arrest without warrant. The question to be decided is whether the offence is bailable or not.

President: Mr. Legal Remembrancer, have you examined the matter?

Mr. Puthupally S. Krishna Pillai: Yes, Sir. The Criminal Procedure Code covers the case. The last schedule deals with this matter.

The amendment was put and lost.

The Preamble and the Title.

The question that the Preamble and the Title do form part of the Bill was put and carried. The Preamble and the Title were added to the Bill.

Mr. Puthupally S. Krishna Pillai: Sir, I move that the Bill be passed.

Mr. A. Lakshminarayana Aiyar: I second it.

The question that the Bill be passed was put and carried. The Bill was passed.

MOTION REGARDING THE CONSTITUTION OF THE ECONOMIC DEVELOPMENT BOARD.

Mr. A. Gopala Menon (*Director of Public Instruction and President, Economic Development Board,*): Sir, I move that the

LIBRARY ARCHIVES Kerala Legislative Assembly